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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,495	05/10/2004	Michael A. Nagorski	NAGP101US	3494
24041	7590	05/11/2006	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			SPISICH, MARK	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/709,495

Applicant(s)

NAGORSKI, MICHAEL A.

Examiner

Mark Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because of legal phraseology (eg, "means" in lines 3,6 and 8). Correction is required. See MPEP § 608.01(b).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the (1) LCD of claims 9 and 27; (2) LED of claims 10 and 28; and (3) the spring powered ejector of claim 19 must be shown or the feature(s) canceled from the claim(s). **No new matter should be entered.**

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "Said at least one thumbwheel stop" (claim 24, line 2) lacks antecedent. Applicant should review the claims for any additional informalities.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7,11,12,15-18,20-25 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hsu (USP 6,220,973). The patent to Hsu discloses a device comprising a housing (1), a brush (41 or 42) retractable and extendable from the housing (figs 1 and 2) and further including a counting means in the form of a thumbwheel (53) having thereon a plurality of indicia (column 3, lines 10-12).

6. Claims 1-4,7,11,12,15-17,20-22,25 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoyt et al (USP 5,419,551). The patent to Hoyt discloses a device comprising a housing (12a,12b), brush (20) and a counting means (18) in the form of a thumbwheel with a plurality of indicia thereon.

7. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 10-151022. '022 discloses a device comprising a housing (1), brush (2) and mounting means (3,etc).

8. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Peilet et al (USP 2,981,963). The patent to Peilet discloses a device comprising a housing (30), brush (22) and counting means.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peilet et al (USP 2,981,963) in view of Merritt (USP 5,485,646). The patent to Peilet discloses the invention substantially as claimed with the exception of the electronic display. The patent to Merritt discloses an electronic display (4) also for counting the number of strokes for a hair brush. It would have been obvious to one of ordinary skill to have modified the device of Peilet as it is shown to be a known equivalent means for displaying a stroke count.

11. Claims 8,13,14,26,30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu (USP 6,220,973). With regard to the particular housing material, one of ordinary skill would recognize that that both plastic and metal are well known materials and the choice any one of these would be obvious based on individual

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preference. The provision of plural thumb wheels would amount to an obvious duplication of parts and in this instance would enable more than one golfer's scores to be recorded.

12. Claims 1,11,12,15-19 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nehrke (USP 2,671,238) in view of Peilet et al (USP 2,981,963). The patent to Nehrke discloses a housing (1,2) in which a brush (11) is movably mounted so as to be retractable and extendable. The patent to Nehrke discloses the invention substantially as claimed with the exception of the counting means. The patent to Peilet discloses the combination of a counting means which is applicable to brushes in general. It would have been obvious to one of ordinary skill to have provided such a counting means to the brush of Nehrke for counting the number of strokes taken by the brush.

13. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu (USP 6,220,973) in view of Freeman (USP 5,084,695). The patent to Hsu discloses the invention substantially as claimed with the exception of the particular display. The patent to Freeman discloses a counting device for keeping score for a sporting event and which, instead of a mechanical display, utilizes an electronic display (28-34) of either an LCD or LED (column 3, lines 13-14). It would have been obvious to one of ordinary skill to have modified the device of Hsu as such as it is shown to be an equivalent means for displaying a count in a sporting event and also because a large number might be more visible than a small indicia.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Cross and RU '368 are pertinent to the combination of a brush with a counting means.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich
Primary Examiner
Art Unit 1744

MS